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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

RENE ORTEGA,

Defendant and Appellant.

E065626

(Super.Ct.No. RIF1506405)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Jean P. Leonard, Judge.

Affirmed.

Beatrice C. Tillman, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On March 1, 2016, defendant and appellant Rene Ortega pled guilty to burglary (count 1; Pen. Code, § 459)¹ and misdemeanor vandalism (count 2; § 594). Defendant

¹ All further statutory references are to the Penal Code unless otherwise indicated.

additionally admitted allegations he had suffered six prior prison terms (§ 667.5, subd. (b)) and a prior strike conviction (§§ 667, subds. (c), (e)(1), 1170.12, subd. (c)(1)). Pursuant to an agreement with the court, defendant was sentenced to 32 months' incarceration.

After defendant and his counsel filed notices of appeal, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case and identifying three potentially arguable issues: (1) whether the court sentenced defendant in accordance with his plea agreement; (2) whether the court abused its discretion by denying defendant's *Marsden*² motion; and (3) whether the court abused its discretion by denying defendant's motion to withdraw his plea. We affirm.

I. FACTUAL AND PROCEDURAL HISTORY

On November 19, 2015, the People charged defendant by information with burglary (count 1; § 459) and felony vandalism (count 2; § 594). The People additionally alleged defendant had suffered six prior prison terms (§ 667.5, subd. (b)) and a prior strike conviction (§§ 667, subds. (c), (e)(1), 1170.12, subd. (c)(1)). Defendant faced a maximum sentence of 12 years' imprisonment if found guilty on all charges and allegations.

² *People v. Marsden* (1970) 2 Cal.3d 118.

The People offered defendant a sentence of six years eight months, both before and after the preliminary hearing, if defendant pled guilty and admitted the allegations. Defendant rejected the offers.

On February 29, 2016, the People moved to reduce the count 2 offense to a misdemeanor. The court granted the motion. On the same date, after a hearing, the court denied defendant's *Marsden* motion.

On March 1, 2016, defendant pled guilty to the court and admitted the attached allegations. In return, the court offered defendant an aggregate sentence of 32 months and agreed to stay imposition of sentence on defendant's prior prison terms. Defendant admitted that he willfully and unlawfully entered a locked motor vehicle with the intent to commit a theft and unlawfully and maliciously defaced certain property.

On March 18, 2016, the court held a hearing on defendant's oral motion to withdraw the plea. The court denied the motion. On the same date, the court sentenced defendant pursuant to the terms of the plea agreement: "The Court chooses this term based on the agreement between [defendant] and the Court." The court stayed imposition of sentence of defendant's six prior prison terms. On July 1, 2016, the court entered an order nunc pro tunc striking sentence on defendant's six prior prison terms.

II. DISCUSSION

We offered defendant an opportunity to file a personal supplemental brief, which he has not done. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues.

III. DISPOSITION

The judgment is affirmed.

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McKINSTER
J.

We concur:

HOLLENHORST
Acting P. J.

SLOUGH
J.